Strong

17.

Stebbins

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~416~~ 190

SAMUEL W. SMITH, PLAINTIFF IN ERROR,

vs.

JOSEPH F. SHEELEY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED JANUARY 4, 1870.

17

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INDEX.

	Original.	Print.
Petition	1	1
Summons	3	2
Answer	4	2
First trial	5	3
Second trial	7	4
Motion for new trial	8	4
Order of court	10	5
Bill of exceptions	11	5
Judgment	21½	14
Bond	22	14
Writ of error	23	15
Citation	25	16
Certificate of clerk	27	16

1 Pleas before the Honorable Elmer S. Dundy, United States district judge for the district of Nebraska, sitting in the U. S. circuit court for said district, at the term of May, 1869.

SAMUEL W. SMITH
v.
JOSEPH F. SHEELEY.

Be it remembered that, on the 30th day of May, 1867, there was filed in the said circuit court, by and on behalf of the plaintiff above, a paper in the words and figures following, to wit:

In the circuit court of the United States, district of Nebraska.

SAMUEL W. SMITH
v.
JOSEPH F. SHEELEY. } Petition.

Samuel W. Smith, who is a citizen of the State of Pennsylvania, complains of Joseph F. Sheeley, who is a citizen of the State of Nebraska, & says that he, the said plaintiff, is seized in fee-simple & well entitled to the immediate possession of certain lands & premises, with the appurtenances, situate in the city of Omaha, in the county of Douglas, and State of Nebraska, known as the east one-third of lot number
1½ three, (3,) in block one hundred and thirty-six, and described as follows, that is to say: beginning at the northeast corner of said lot; running thence south on the east line thereof one hundred and
2 thirty-two feet to the alley; thence on the north line of said alley west twenty-two feet; thence north on a line parallel to the east line of said lot one hundred and thirty-two feet to the south line of Farnham street; thence east on said south line of Farnham street twenty-two feet, to the place of beginning; and that the said defendant unlawfully keeps said plaintiff out of the possession thereof.

Wherefore the said plaintiff prays the judgment for the possession of said premises & costs of suit.

J. M. WOOLWORTH,
Pl'ffs' Att'y.

UNITED STATES OF AMERICA,
State of Nebraska, ss:

J. M. Woolworth, being duly sworn, says he is attorney for the plaintiff in above petition; that said plaintiff is a non-resident of, & not in said State; and said petition is true, as deponent verily believes.

J. M. WOOLWORTH.

Subscribed in my presence, and sworn to before me, this 30th day of May, 1867.

E. B. CHANDLER, *Clerk.*

Upon which said paper appears endorsements in words and figures following, to wit:

No. 2. U. S. circuit court, dist. of Nebraska. Samuel W. Smith v. Joseph F. Sheeley. Petition. J. M. Woolworth, pl'ff's att'y. Filed May 30th, 1867, E. B. Chandler, clerk.

3 And afterwards, to wit, on the 30th day of May, 1867, a summons was issued out of the clerk's office of said court in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Nebraska, ss:

The President of the United States to the marshal of said district of Nebraska, greeting:

You are hereby commanded to notify Joseph F. Sheely that he has been sued by Samuel W. Smith in the circuit court of the United States for the district of Nebraska, and he must answer the petition filed therein by the said Samuel W. Smith on or before the eighth day of July, 1867, or the said petition will be taken as true, and judgment rendered accordingly.

The said marshal will make due return of this writ on or before the tenth day of June, 1867.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Omaha, in said district, on this 30th day of May, 1867.

[L. S.] E. B. CHANDLER, *Clerk.*

Upon which said summons appears endorsements in [in] words and figures following, to wit:

No. 2. U. S. circuit court, dist. of Nebraska. Summons. Samuel W. Smith vs. Joseph F. Sheeley. For the recovery of real estate.
4 Filed June 6th, 1867, E. B. Chandler, clerk.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that, on the first day of June, A. D, 1867, I served the within writ on Joseph F. Sheeley, the defendant within named, by reading contents of same to him, and by delivering to him personally, at Omaha, in said district, a true copy thereof.

C. E. YOST, *U. S. Marshal.*

Marshal's fees, $2 56.

And afterwards, to wit, on the 7th day of November, 1867, was filed in the clerk's office of said court a paper in words and figures following, to wit:

In circuit court of the United States for the district of Nebraska.

SAMUEL W. SMITH, PLAINTIFF,
vs.
JOSEPH F. SHEELY, DEFENDANT.

Come now said defendant, and for answer to the petition denies that the plaintiff is the owner in fee or otherwise of the land described in the petition, and further denies that the plaintiff has a real estate therein, or that the plaintiff is entitled to the possession thereof. But the defendant alleges that he is the owner of said land in fee-simple, and is in, and is entitled to, the possession thereof, and prays judgment against the plaintiff.

REDICK & BRIGGS,
Att'ys for Def't.

DISTRICT OF NEBRASKA, *Douglas County, ss:*

Joseph F. Sheeley, being by me first duly sworn, deposes and says that he is the defendant named in the above answer; that he has read the same, and knows the contents thereof; and that the facts therein stated are true, as he verily believes.

JOSEPH F. SHEELEY.

Subscribed in my presence, and sworn to before me, this 6th day of November, 1867.

BEN. SHUKS,
Probate Judge.

Upon which said paper appear endorsements in words and figures following, to wit:

No. 2. Circuit court U. S. Samuel W. Smith vs. Joseph F. Sheeley. Answer filed Nov. 7th, 1867, E. B. Chandler, clerk. Redick & Briggs, att'ys for def't.

At the November term of said court, to wit, on the 8th day of November, 1867, the said cause came on to be tried before the said court and a jury, as appears by a record thereof in the journal of said court in words and figures following, to wit:

SAMUEL W. SMITH
vs.
JOSEPH F. SHEELEY.

This cause having come on to be tried before his honor the judge presiding, and a jury, came the following good and lawful men, to wit, 1, Alfred Burley; 2, William A. Pollock; 3, Ralph Boman; 4, St. John Goodrich; 5, Robert Jordan; 6, Alonzo Perkins; 7, Henry French; 8, Albert Tucker; 9, Philip R. Helan; 10, Samuel Orchard; 11, Charles Beindorf; 12, Emerson Seymour, who were then and there duly sworn to try the issues joined therein; and, after the hearing of the evidence of the parties, and the argument of their respective counsel, and the charge of the court, retired to consider of their verdict, and thereupon returned into the court, and then and there returned their verdict, as follows:

"We, the jury empaneled in this cause, on issue joined, do find for the defendant.

(Signed) "S. J. GOODRICH, *Foreman.*"

And thereupon, on motion of the counsel for the defendant, it is now here considered and adjudged by the court that the said defendant have and recover from said plaintiff the possession of the premises here in question, to wit, the east one-third of lot number three, in block number one hundred and thirty-six, in the city of Omaha; and that the proper writ of possession issue out of this court for the purpose of putting said defendant in the possession thereof.

And thereupon came the said plaintiff, by J. M. Woolworth, esq., his attorney, and gave notice on the journal that he demanded, and he did demand, another trial herein.

And thereupon it is ordered, considered, and adjudged that the said judgment be, and the same is hereby, vacated; and that said action stand for trial at the next term of this court.

7 And afterwards, to wit, on the 7th day of May, 1868, the following proceeding was had in said cause, which appears of record in words and figures following, to wit:

SAMUEL W. SMITH
vs.
JOSEPH F. SHEELEY.

This cause having this day come on for trial, and the parties herein demanding a jury, thereupon came A. B. Fuller, John Shoaf, J. H. Brown, Jacob King, E. C. Stangland, Abraham Hursch, William Heely, Clement Landgreber, C. P. Mabin, E. Flemming, L. P. Tuttle, and Philander Reed, good and lawful men, who were duly sworn to try the issue joined; and the testimony not being closed at the hour of adjournment, the said jury were instructed by the court to have no conversation of the matters before them, and were adjourned until the coming in of court tomorrow morning at half past nine o'clock.

And afterwards, to wit, on the 8th day of May, 1868, the following proceeding was had in said cause, which appears of record in words and figures following, to wit:

SAMUEL W. SMITH
vs.
JOSEPH F. SHEELEY. } Ejectment.

8 This cause having on this day come on to be heard, and the jury empanneled herein having heard the testimony adduced, the arguments of counsel, and the charge of the court, rendered the following verdict, to wit:

"We, the jury empanneled in this cause and sworn, do find upon the issue joined in this cause for the defendant; and do further find that the plaintiff is not the owner of or entitled to the possession of the east twenty-two (22) feet of lot three (3) in block 136, in the city of Omaha, Douglas County, State of Nebraska; nor has the plaintiff any legal estate therein, being the property described in the petition; nor was he the owner thereof, or entitled to the possession of the same, at the time this suit was commenced.

"J. H. BROWN, *Foreman.*"

Thereupon James M. Woolworth, esq., the attorney for the plaintiff gave notice of a motion to set aside said verdict, and for a new trial of this cause.

And afterwards, to wit, on the 12th day of May, 1868, a paper was filed in the clerk's office of said court in the words and figures following, to wit:

In the circuit court of the United States, district of Nebraska.

SAMUEL W. SMITH
vs.
JOSEPH F. SHEELEY. } Motion for new trial.

Now comes the said plaintiff, by J. M. Woolworth, his attorney, and moves the court for a new trial in the above-entitled cause, & to set

aside the verdict rendered by the jury therein for the reasons,
9 following, to wit:

1st. On the trial of said cause the judge presiding thereat committed error in admitting in evidence the power of attorney purporting to be made by George W. Mitchell to John J. Redick to convey the premises in question.

2d. The said judge committed error in admitting in evidence a deed purporting to be made by said Mitchell by his said attorney to the so-called Nemaha Valley Bank.

3d. The said judge committed error in refusing to instruct the jury as requested by said plaintiff.

4th. The said judge erred in directing the jury that the deed to the so-called Nemaha Valley Bank was valid and effectual to pass the title to the said concern.

5th. The said judge erred in directing the jury to find a verdict for the defendant.

6th. The said verdict was against the law & the evidence.

J. M. WOOLWORTH, *Pl'ff's Atty.*

Upon which said paper appears endorsements in words and figures following, to wit:

No. 2. U. S. circuit court. Samuel W. Smith v. Joseph F. Sheeley. Motion for new trial. J. M. Woolworth, pl'ff's att'y. Filed May 12th, 1868, E. B. Chandler, clerk.

10 And afterwards, to wit, on the 16th day of May, 1868, in the said cause was made and entered by said circuit court an order in the words and figures following, to wit:

SAMUEL W. SMITH
vs.
JOSEPH F. SHEELEY. } Ejectment.

The plaintiff herein having filed his motion for a new trial within the time allowed in that behalf, it is ordered by the court that the same be heard at the next term of this court; to which time this cause is continued.

And afterwards, to wit, on the 22d day of May, 1868, a paper was filed in the clerk's office of said court in words and figures following, to wit:

11 In the United States circuit court, district. of Nebraska.

SAMUEL W. SMITH
v.
JOSEPH F. SHEELEY. } Bill of exceptions.

Be it remembered that on the trial of this cause, at the term of May, A. D. 1868, before the Honorable Elmer S. Dundy, district judge, presiding, and a jury, the plaintiff, to support the issues on his part, read in evidence to the court and jury a certain deed made by James G. Smith to Charles W. Smith, dated on the 10 day of May, 1867, conveying the premises here in question, a copy of which deed is hereto annexed, marked "A."

And the said plaintiff, further to maintain the issues on his part,

offered & read in evidence a certain deed made by George W. Mitchell and wife to James G. Smith, dated May 29th, 1863, conveying the premises here in question, a copy of which deed is hereto annexed, marked "B."

And the said plaintiff, further to maintain the issues on his part, offered & read in evidence a certain deed made by Jesse Lowe, mayor of the city of Omaha, to George W. Mitchell, dated April, 22d, 1857, a copy of which is hereto annexed, marked "C."

And the said plaintiff, further to maintain the issues on his part, read in evidence certain letters-patent from the United States to Jesse
11½ Lowe, mayor of the city of Omaha, a copy of which letters-patent is hereto annexed, marked D.

And thereupon the said defendant admitted on the record that the said premises described in said letters-patent include the premises here in question; & that the lands in said patent described were entered by the corporate authorities of said city, at the United States land office, in trust, on the 17 day of March, 1857.

And thereupon the said plaintiff rested his case.

And thereupon the said defendant, to maintain the issues on his part, offered in evidence a certain purported letter of attorney from George W. Mitchell to John J. Redick, dated February 14, 1857, a copy of which is hereto annexed, marked "E;" to which said plaintiff objected on the ground: 1st. That the said letter gave authority to convey only such interest in said premises as said Mitchell had at its date; whereas, afterwards, he acquired, as the evidence showed, a legal title thereto. 2d. That at the making of said letters said Mitchell could have had & did have no title to said premises, & afterwards acquired title thereto.

Which objections were overruled by the court, to which order & ruling said plaintiff then and there duly excepted, & prayed the said judge to sign & seal this his bill of exceptions, which is accordingly done.
12 And thereupon the said defendant read said letter of attorney in evidence to said court and jury.

And thereupon the said defendant, further to maintain said issues on his part, offered in evidence a certain deed made by said Redick, under the authority of said letter from said Mitchell, to the Nemaha Valley Bank, dated May 5th, 1857, a copy of which deed is hereto annexed, marked "F," to which the said plaintiff then and there objected on the ground that there is no competent grantee in said deed, nor is said deed duly acknowledged; which objection was overruled by the court, to which order & ruling of the court said plaintiff then and there duly excepted, & prayed the said judge to sign & seal this his bill of exceptions; which is accordingly done. And thereupon the said defendant read the said deed in evidence to the said court & jury.

And thereupon the said defendant, further to maintain the said issues on his part, Samuel E. Rogers as a witness on his behalf, who was duly sworn & testified:

"I have lived here thirteen years. (The act of the legislature of Nebraska hereto annexed, marked "G," shown to the witness.) The commissioners named in this act did organize regularly, under the provisions of the charter, in the spring following the passage of the act. They did business, after they were organized, under that organization."

Cross-examined:

"We organized under this act the following spring after its passage & continued to do business under it. We organized in writing
12½ but do not know what had become with the writing. We organ-

ized by the name designated in the act, The Nemaha Valley Bank. The institution was located at Brownville; it did a banking business."

Re-direct examination:

"We bought some real estate."

And thereupon said defendant, further to maintain the issues on his part, offered himself as a witness, and being duly sworn, testified that in May, 1863, the property was worth $2,000; & when the suit was brought, it was worth from $3,000 to $5,000, and is yet.

And thereupon the said defendant rested his case.

And thereupon the said plaintiff, further to maintain said issues on his part, offered & read in evidence to said court and jury, from the laws of the legislature of the late Territory of Nebraska, second session, pages 208 & 9, an act entitled "An act to charter the Nemaha Valley Bank," a copy of which is hereto annexed, marked "G," and thereupon rested his case.

And thereupon said plaintiff requested the said judge to instruct the said jury as follows:

"1. That the deed dated the 5 day of May, 1857, signed Geor. W. Mitchell, by John J. Redick, his attorney in fact, is invalid, & passed no title to the Nemaha Valley Bank.

"2. That the plaintiff has shown a valid and correct chain of title from the government of the United States to him, and is entitled to the verdict of the jury.

13 "3. That the power of attorney from Mitchell to Redick, which was given in evidence by the defendant, did not authorize the defendant to convey any interest or title which Mitchell acquired after the execution of the power of attorney, & as there is no evidence that Mitchell had any interest in or title to the property in controversy at the time of the execution of the power of attorney, the deed from Mitchell by Redick, his attorney, to the Nemaha Valley Bank conveyed no title.

"4. Upon the evidence in this case the plaintiff is entitled to a verdict.

"5. The Nemaha Valley Bank was not a legal & valid corporation, capable of receiving the title to real estate, & the instrument purporting to convey the property in question to the said bank was inoperative for the purpose."

Each of which requests to instruct the jury the said judge refused, to which order & refusal severally the said plaintiff then & there duly excepted, & prayed the said judge to sign & seal this his bill of exceptions, which is accordingly done.

And thereupon the said judge instructed the said jury as follows:

"Both parties claim by deeds from George W. Mitchell. The deed of the defendant from him is prior to that of the plaintiff, and, if valid, passed the title to the Nemaha Valley Bank. The deed to the Nemaha Valley Bank was valid and passed the title to said bank. The

13½ jury will discharge its whole duty in this case by finding a verdict for the defendant."

And thereupon the said plaintiff excepted to the said charge of the said judge to said jury, & to each and every item thereof, and prayed the said judge to sign & seal this his bill of exceptions, which is accordingly done.

Dated May 13, 1868.

[L. S.] E. S. DUNDY, *Judge.*

Exhibit "A," being copy of deed referred to in the bill of exceptions hereto annexed:

Warranty deed.

Know all men by these presents that I, James G. Smith, of Dodge County, Nebraska, in consideration of two thousand dollars in hand paid, do hereby grant, bargain, sell, convey, & confirm unto Samuel W. Smith, of Wyoming County, Pennsylvania, the following-described real estate, situate in the county of Douglas, & State of Nebraska, to wit: The east twenty-two feet of lot three, (3,) in block one hundred & thirty-six, (136,) in the city of Omaha, as surveyed & lithographed by the Council Bluffs and Nebraska Ferry Company, together with all the tenements, hereditaments, & appurtenances to the same belonging, & all the estate, right, title, interest, dower, claim, or demand whatsoever of the said James G. Smith, of, in, or to the same, or any part thereof: To have and to hold the above-described premises, with the appur-
14 tenances, unto the said Samuel W. Smith, & to his heirs and assigns forever. And I do hereby covenant with the said Samuel W. Smith, & his heirs & assigns, that I am lawfully seized of said premises; that they are free from incumbrance; that I have good right & lawful authority to sell the same. And I do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever.

Signed this tenth day of May, A. D. one thousand eight hundred & sixty-seven.

JAMES G. SMITH.

In presence of—
BYRON REED.

THE STATE OF NEBRASKA, *Douglas County, ss:*

On this tenth day of May, A. D. 1867, before me, a notary public in & for said county, personally came the above-named James G. Smith, who is personally known to me to be the identical person whose name is affixed to the above deed as grantor, and he acknowledged the instrument to be his voluntary act and deed.

Witness my hand and notarial seal the date aforesaid.

[SEAL.] BYRON REED,
Notary Public.

[Two-dollar revenue stamp.]

Upon the foregoing deed are the following endorsements:

Warranty deed from James G. Smith to Samuel W. Smith. Re-
14½ ceived for record 10th day of May, A. D. 1867, at 4 o'clock p. m., and recorded in Book W of deeds, 622. Frank Murphy, county clerk Douglas County, Neb.

Exhibit B, being copy of deed referred to in the bill of exceptions hereto annexed:

In consideration of one dollar to us in hand paid, the receipt whereof is hereby acknowledged, we, George W. Mitchell, and Lucy Mitchell, his wife, of Fon Dulack County, Wisconsin, do hereby quitclaim to James G. Smith all that certain piece or parcel of land situate in the city of Omaha, County of Douglas, & State of Nebraska, known as the east twenty-two feet of lot three, (3,) in block one hundred and thirty-six,

(136:) To have & to hold the said premises, with the appurtenances, unto said James G. Smith & his heirs forever.

Witness our hands and seals this 29 day of May, 1863.

GEORGE W. MITCHELL.
LUCY MITCHELL.

Witness: HENRY SCHEB.

[Int. rev. stamp, 50c., cancelled.]

WISCONSIN, *Fon du Lac County, ss:*

On this 29 day of May, 1863, before me, a notary public in & for said county, personally came before me George W. Mitchell, & Lucy, his wife, to me known to be the identical person whose names are annexed to the above deed as grantors, & acknowledged the same to be their voluntary act and deed.

N. C. NOBLE,
Notary Public.

15 STATE OF WISCONSIN,
Clerk's office, Fon du Lac County, ss:

John C. Bishop, clerk of the circuit court in & for said county & State, do hereby certify that N. C. Noble, whose name is subscribed to the certificate or proof of acknowledgement of the annexed instrument, was at the time of taking the same an acting notary public in & for said county & State, duly commissioned & qualified by law & authorized to take the same; that I am well acquainted with his handwriting, & verily believe the signature thereto to be his genuine signature; & further that said deed is executed & acknowledged according to the laws of this State.

In testimony whereof I have hereunto set my hand & the seal of said court this 29th day of May, 1863.

[SEAL OF COURT.] JOHN C. BISHOP, *Clerk.*

Exhibit "C," being deed referred to in the bill of exceptions hereto annexed:

Mayor of Omaha City to Geo. W. Mitchell.

This indenture, made this 22d day of April, in the year of our Lord one thousand eight hundred & fifty-seven, witnesseth, that whereas the Congress of the United States passed an act entitled "An act for the relief of the citizens of towns upon the lands of the United States, under certain circumstances," approved May 23d, 1844; and whereas the legislative assembly of the Territory of Nebraska, under & in pursuance of said act of the said Congress, passed an act entitled "An act
15½ regulating the disposal of lands purchased in trust for town sites," approved Feb. 10, 1857, and having paid for and received a title from the United States, in trust for the occupants & owners of lots & pieces of land in the city of Omaha & Territory of Nebraska, which city is located on the northeast quarter, & the north half of the west quarter of sec. number twenty-two, and lot No. two, in fractional section No. twenty-three, in township fifteen north, of range thirteen east:

Now, therefore, by the power in me vested by the two several acts, as such trustee aforesaid, & as the mayor of the city of Omaha, in consideration of the premises & two dollars & fifty cents to me paid, the receipt whereof is hereby acknowledged, I do by these presents convey unto Geo. W. Mitchell all that certain piece or parcel of land, being in the city of Omaha, county of Douglas, and Territory of Nebraska, as

originally surveyed by A. D. Jones, & lithographed by the Council Bluffs & Nebraska Ferry Company, & described as follows, to wit: the east twenty-two feet of lot three, (3,) in block No. one hundred & thirty-six, (136.)

In witness whereof I have hereunto set my hand and seal of office the day & year above written.

{ SEAL OF CITY } JESSE LOWE,
{ OF OMAHA. } *Mayor of the City of Omaha.*

In presence of—
JA'S M. WOOLWORTH.

16 TERR. OF NEBRASKA, *Co. of Douglas:*

On this 22d day of April, A. D. 1857, before me, the subscriber James M. Woolworth, a notary public in & for said county & Territory, personally appeared Jesse Lowe, mayor of the city of Omaha, & acknowledged the execution of the foregoing conveyance to be his voluntary act & deed as mayor of said city, & as trustee by virtue of his said office, in trust under the two several acts therein named. And I further certify that I know the said Jesse Lowe, who made the said acknowledgement, to be the identical person whose name is affixed to said deed as grantor, & who is mayor said city.

In witness whereof I have hereunto set my hand & official seal the day & year above written.

[SEAL.] JA'S M. WOOLWORTH, *N. P.*

Exhibit D, being patent referred to in annexed bill of exceptions:

Certificate No. 35.

The United States of America to all whom these presents shall come, greeting:

Jesse Lowe, mayor of the city of Omaha, "in trust for the several use & benefit of the occupants thereof, according to their respective interests:"

Whereas, and as the proper corporate authority, under the town-site act of Congress, approved 23d May, 1844, entitled "An act for the relief of the citizen of towns upon the lands of the United States, under
16½ certain circumstances," has deposited in the General Land Office of the United States a certificate of the register of the land office at Omaha, whereby it appears that full payment has been made by the said Jesse Lowe, mayor of the city of Omaha, and in trust as aforesaid, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provisions for the sale of public lands," for the south half of the northeast quarter of section twenty-two, and the lot numbered two of section twenty-three, in township fifteen north, of range thirteen east, in the district of lands subject to sale at Omaha, Nebraska, containing one hundred and thirty-eight acres and twenty-hundredths of an acre, according to the official plat of the survey of said lands, returned to the General Land Office by the Surveyor General, which said tracts have been purchased by the said Jesse Lowe, mayor of the city of Omaha, and in trust as aforesaid.

Now, know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such cases made and provided, have given and granted, and by these presents do give & grant, unto the said Jesse Lowe, mayor of the city of Omaha, and as the proper corporate authority thereof, in trust for

17 the several use and benefit of the occupants thereof, according to their respective interests, under said act of 23d May, 1844, and to his successors and assigns in trust as aforesaid, the said tracts above described: To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Jesse Lowe, mayor of the city of Omaha, and as the proper corporate authority thereof, in trust for the several use and benefit of the occupants thereof, according to their respective interests, under said act of 23rd May, 1844, and to his successors and assigns in trust as aforesaid.

In testimony whereof I, James Buchanan, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the first day of October, in the year of our Lord one thousand eight hundred and [&] sixty, and of the independence of the United States the eighty-fifth.

JAMES BUCHANAN,

By the President:

By J. B. LEONARD, *Sec'y.*

[SEAL.] J. N. GRANGER,

Recorder of the General Land Office.

Recorded vol. 2, page 450, E.

17½ Endorsed on the back of the foregoing patent the following: United States to the city of Omaha. Rec'd for record, Dec. 31, 1850, at 2 o'c. p. m., and recorded in Book "N" of deeds, at page 121. Thomas O. Conner, reg. of deeds.

Exhibit "E," being power of attorney referred to in the annexed bill of exceptions:

Know all men by these presents that I, Geo. W. Mitchell, of Fon du Lac County, & State of Wisconsin, have appointed, & by these presents do hereby appoint, John P. Redick, of the county of Douglas, & Territory of Nebraska, to be my true & lawful attorney in fact, for me & in my name to sell & convey the following-described property, situated in the county of Douglas, and Territory of Nebraska: Being twenty-two (22) feet of the east side of lot No. three, (3,) in block number one hundred & thirty-six, (136,) as first surveyed by A. D. Jones, & lithographed by the Council Bluffs & Nebraska Ferry Company; also lot, (1,) in block, (197,) & lot, (3,) in block, (174½.) And said Redick is hereby authorized & empowered to sell & convey such interest as I have in the said lots of land, & such title as I may have to the
18 same, & no other or better title. And it is hereby understood, & these presents are upon this express consideration, that I shall not hold myself personally liable or responsible for the acts of my said attorney in conveying any of the aforesaid lots beyond quitclaiming whatever titles I have in said premises, without recourse on me, & to that extent, & that only.

I hereby ratify & confirm the acts of my said attorney, and I hereby revoke a certain power of attorney heretofore given by me to one G. M. Penny, authorizing him to act as my att'y in selling whatever interest I then had to any land in Nebraska Territory.

Given under my hand & seal this 14th day of February, 1857.

G. W. MITCHELL. [SEAL.]

In presence of—

H. A. JACKSON & S. D. STANCHFIELD.

STATE OF WISCONSIN, *County of Fon du Lac:*

Be it remembered that on the 14th day of February, A. D. 1857, personally came before me, a justice of the peace in & for said county, G. W. Mitchell, to me known to be the person who executed the foregoing power of attorney, & acknowledged that he executed the same for the uses & purposes therein mentioned.

H. J. JACKSON,
Justice of the Peace in and for the Co.

18½ STATE OF WISCONSIN,
Clerk's Office Fon du Lac County, ss:

I, John C. Bishop, clerk of the circuit court in and & for said county & State, do hereby certify that H. J. Jackson, esq., whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument thereon written, was at the time of taking the same an acting justice of the peace in & for said county, duly elected & qualified by law, & authorized to take the same; that I am well acquainted with the handwriting of such justice, & verily believe that the signature purporting to be his is genuine; and further that said instrument is executed & acknowledged conformably to the laws of this State.

In testimony whereof I have hereunto set my hand & affixed the seal of said court at the city of Fon du Lac, in said county, this 20th day of February, A. D. 1857.

[SEAL OF SAID COURT.] JOHN C. BISHOP, *Clerk.*
S. D. STANCHFIELD, *D. Clk.*

Exhibit F, being copy of deed referred to in the annexed bill of exceptions:

Know all men by these presents that I, Geo. W. Mitchell, by his att'y in fact, John J. Redick, of the county of Fon du Lac, & State
19 of Wisconsin, for the consideration of the sum of eleven hundred & seventy-five dollars, hereby quitclaim to the Nemaha Valley Bank, of the county of Nemaha, and Territory of Nebraska, to wit, the east twenty-two feet of lot No. 3, in block No. 136, as numbered in the recorded plat of the city of Omaha, in the county of Douglas, N. T.

In witness whereof I have hereunto subscribed my name this 5th day of May, 1857.

GEO. W. MITCHELL, [SEAL.]
JOHN J. REDICK,
His Att'y in fact.

Attest: J. G. CHAPMAN.

TERRITORY OF NEBRASKA, *Douglas County:*

On this 5th day of May, A. D. 1857, personally appeared before me, a notary public in & for the county of Douglas & Territory of Nebraska, John J. Redick, the attorney in fact of Geo. W. Mitchell, personally known to me to be the identical person whose name is affixed to the above conveyance as grantor, & acknowledged the execution of the same to be his voluntary act & deed.

In witness whereof I have hereunto set my hand & notarial seal this 5th day of May, A. D. 1857.

[SEAL.] JAMES G. CHAPMAN,
Notary Public.

Exhibit "G," being copy of an act of the legislature of Nebraska referred to in the annexed bill of exceptions:

An act to charter the Nemaha Valley Bank.

SECTION 1. *Be it enacted by the council and house of representatives of the Territory of Nebraska*, That Col. Clement Brown, J. S. Brown, B. B. Frazier, Volney Brown, Richard M. Waterman, Richard Brown, their heirs and assigns, are hereby appointed commissioners, and they, or any five of them, are authorized to carry into effect, from and after the passage of this act, the establishment of a bank, to be styled and called the Nemaha Valley Bank, and to be located at Brownville, Nemaha County, Nebraska Territory, with a capital stock of fifty thousand dollars, which may be increased at the will of the stockholders to any amount not exceeding five hundred thousand dollars, to be divided into shares of one hundred dollars each. And the said company, under the above name and style, are hereby declared capable, in law, of issuing notes, bills, and other certificates of indebtedness, dealing in exchange, and doing all things necessary to the carrying on of a regular and legitimate banking business; and also to buy & possess property of all kinds, and to sell & dispose of the same, to contract & be contracted with, to sue and be sued, to defend and be defended against, in all courts of this Territory.

SEC. 2. That the commissioners herein appointed shall have power to cause books to be opened for the subscription of said stock in such manner and at such times and places as they or any five of them may appoint; that whenever twenty-five thousand dollars is fully subscribed, then those making such subscription shall have power to choose a board of directors, whose duty it shall be to organize said bank by electing a president, vice-president, and cashier, and that, in the election of said directors and officers, each share subscribed or then held shall entitle the holder theoreof to one vote, which may be given in person or by proxy.

SEC. 3. It shall be the duty of the president or vice-president (or either of them shall be competent) and cashier to attach their respective names to all bills or notes issued by said bank to circulate as currency, and the stockholders shall be each individually liable for the full and final redemption of such issue, payable at their banking-house, in gold or silver, and that this charter shall have an existence and be in force, if faithfully complied with, for the term of twenty years from the date of its passage and becoming a law of the Territory.

SEC. 4. The stock of said bank shall be assignable and transferable according to such rules and under such restrictions as the board of directors may prescribe, who shall have power at all times to make such rules and regulations as may appear for the well-being of said bank, not inconsistent with the Constitution and laws of the United States and of this Territory.

SEC. 5. The directors of the bank shall make, or cause to be made, through their cashier, under oath or affirmation, an annual report to the auditor of the Territory or State, as the case may be, a full exhibit of the condition of said bank; which report shall be published in three newspapers of the Territory by said auditor.

SEC. 6. This act shall be in force from and after its passage.

Approved January 18, 1856.

Upon which paper appears endorsements in words and figures following, to wit:

2. U. S. circuit court. Samuel W. Smith v. Joseph F. Sheeley. Bill of exceptions. J. M. Woolworth, pl'ffs att'y. Filed May 22d, 1868, E. B. Chandler, clerk.

21 And afterwards, at the adjourned November term of said court, to wit, on the 22d day of February, 1869, in the said cause was made and entered by said circuit court an order in the words and figures following, to wit:

SAMUEL F. SHEELY
vs. } Law.
JOSEPH F. SHEELY.

This cause came on to be heard on motion of said plaintiff, by J. M. Woolworth, his attorney, for a new trial of said cause.

And the court, being fully advised in the premises, it is ordered that said motion be, and the same is hereby overruled; to which ruling of the court the plaintiff accepts.

And afterwards, at the May term of said circuit court, to wit, on the 21st day of May, 1869, in the said cause, an order and judgement was made and entered by said circuit court in words and figures following, to wit:

21½ SAMUEL W. SMITH
vs. } Ejectment.—Judgement.
JOSEPH F. SHEELY.

This cause having been heretofore tried by a jury, to wit, on the 8th day of November, 1867, & the 8th day of May, 1868, and verdicts rendered thereon, and a motion for a new trial overruled, it is ordered, adjudged, and decreed by the court that Joseph F. Sheely was, at time of the commencement of this suit, and is, the true and lawful owner of and entitled to the possession of the premises in question, to wit, the east twenty-two (22) feet of lot three, (3,) in block one hundred and thirty-six, (136,) in the city of Omaha, Douglas County, Nebraska; and that the plaintiff has no legal estate therein.

It is further ordered that said defendant recover from said plaintiff his costs in this behalf expended, the same to be taxed by the clerk of this court.

22 And thereupon afterwards to wit, on the 3d day of November, A. D. 1869, a paper was filed in said circuit court in words and figures following, to wit:

Know all men by these presents that we, Samuel W. Smith, as principal, and James M. Woolworth, as surety, are held and firmly bound unto Joseph F. Sheely in the full and just sum of two hundred and fifty dollars, to be paid to the said Joseph F. Sheely, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Whereas lately, at a circuit court of the United States for the district of Nebraska, in a suit depending in said court between Samuel W. Smith, plaintiff, and Joseph F. Sheely, defendant, a judgement was rendered against said plaintiff; and the said plaintiff having obtained a writ of error, and filed a copy thereof in the clerk's office of the said

court, to reverse the judgment in the aforesaid suit, and a citation directed the said defendant, citing and admonishing him to be and
22½ appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Samuel W. Smith shall prosecute said writ of error to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

SAMUEL W. SMITH, [SEAL.]
By J. M. WOOLWORTH, *his Att'y.*
JAMES M. WOOLWORTH. [SEAL.]

Sealed and delivered in presence of—
WATSON B. SMITH.

Approved by—

ELMER S. DUNDY, *Judge.*

Upon which said paper appears endorsements in words and figures following to wit:

No. 2. U. S. circuit court, district of Nebraska. Samuel W. Smith vs. Joseph F. Sheely. Bond. Filed November 3d, 1869, Watson B. Smith, clerk.

And thereupon, afterwards, to wit, on the 3rd day of Nov., A. D. 1869, the following writ of error and citation was issued out of said court in words & figures following, to wit:

23 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Nebraska, greeting:

Because, in the record & proceedings, as also in the rendition of a judgement of a plea which is in the said circuit court before you, between Samuel W. Smith, plaintiff, and Joseph F. Sheeley, defendant, a manifest error hath happened, to the great damage of the said plaintiff in said cause, as by his complaint appears; we, being willing that error, if any hath been, should be duly corrected, & full & speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly & openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then & there held, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right & according to the laws & customs of the
24 United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, the 3d day of November, 1869.

[SEAL.] WATSON B. SMITH,
Clerk of the Circuit Court of the United States for the District of Nebraska.

Allowed by—

ELMER S. DUNDY, *Judge.*

(Indorsed:) No. 2. U. S. circuit court, district of Nebraska. Samuel W. Smith vs. Joseph F. Sheeley. Writ of error. Filed Nov. 3, 1869, Watson B. Smith, clerk.

25 The United States of America to Joseph F. Sheeley, greeting:

You are hereby cited and admonished to be and appear at a Supreme court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Samuel W. Smith plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgement rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 3rd day of November, in the year of our Lord one thousand eight hundred and sixty-nine.

ELMER S. DUNDY, *Judge.*

26 On this 8th day of November, in the year of our Lord one thousand eight hundred and sixty-nine, personally appeared J. T. Hoile, U. S. marshal, before me, the subscriber, Watson B. Smith, clerk U. S. courts, and makes oath that he delivered a true copy of the within citation to Joseph F. Sheeley at his place of business in Omaha, Nebraska.

J. T. HOILE,
U. S. Marshal Dist. of Neb.

Marshal fees, $2 00.

Sworn and subscribed to before me this 8th day of November, 1869.

WATSON B. SMITH,
Clerk U. S. Courts Dist. of Nebraska.

(Indorsed:) No. 2. U. S. circuit court, district of Nebraska. Sam'l W. Smith vs. Joseph F. Sheeley. Citation. Filed Nov. 8, 1869, Watson B. Smith, clerk.

27 UNITED STATES OF AMERICA,
District of Nebraska, ss:

I, Watson B. Smith, clerk of the circuit court of the United States for said district of Nebraska, do hereby certify that the foregoing are true and faithful transcripts from the records and files of said court, and the whole thereof, and the endorsements thereon, in the case of Samuel W. Smith vs. Joseph F. Sheeley.

I further certify that a copy of the foregoing writ of error and citation has been filed and remains in my office.

Witness my hand and the seal of said court at Omaha this 9th day of December, A. D. 1869.

[SEAL.] WATSON B. SMITH, *Clerk.*

(Indorsement on cover:) No. 416. Samual W. Smith, plaintiff in error, vs. Joseph F. Sheeley. Nebraska C. C. U. S.
Filed 4th January, 1870.

IN THE

United States Supreme Court.

SAMUEL W. SMITH,
Plaintiff in Error,

vs.

JOSEPH F. SHEELEY.

BRIEF AND POINTS FOR PLAINTIFF IN ERROR.

THE plaintiff in error brought this action of ejectment in the Circuit Court for Nebraska, where it was tried to a jury, and a judgment rendered for the defendant.

On the trial the plaintiff showed title in himself by a patent from the government to Jesse Lowe, Mayor of the City of Omaha; by a deed from the Mayor to George W. Mitchell, and by a deed from Mitchell to himself.

The defendant introduced a deed, by which he claimed

that Mitchell, before deeding the premises to the plaintiff, conveyed them to The Nemaha Valley Bank. The case turns upon the question of the validity of this deed.

FIRST POINT.

The deed from Mitchell purporting to convey the premises to the Nemaha Valley Bank, was void, because there was no such corporation.

The record shows that, in February, 1857, the Legislature of the Territory of Nebraska passed an act to incorporate the Nemaha Valley Bank, and that, under it, certain parties did business in that name as a corporation.

On the 1st day of July, 1836, Congress passed a law, which will be found in 5 Statutes at Large, 61, providing "that no act of the territorial legislature of any of the Territories of the United States, incorporating any bank or any institution with banking powers or privileges, hereafter to be passed, shall have any force or effect whatever, until approved and confirmed by Congress."

It is not pretended that this act has been repealed, or that the territorial act incorporating the Nemaha Valley Bank, has ever been approved or confirmed by Congress.

In the act organizing the Territory of Nebraska, approved May 30, 1854, 10 Statutes at Large, 281, section 14, all laws of the United States, not locally inapplicable, are put in force therein.

No words are needed to show that there was no such party as that named in the deed as the Nemaha Valley Bank. There was no grantee in the deed, and it was therefoer void.

It is insisted, on the other side, that as the territorial act conferred other than banking powers, the corporation was thereby created as to those powers. But the language of the act of Congress is broader than that. It declares

inoperative, without Congressional confirmation, not only a bank charter, but also any charter, and the whole of any charter, in which banking privileges are conferred, no matter what other privileges may be granted. Congress meant that its prohibition should not be evaded by any such construction as is here contended for.

It is also said that this act of 1836 applied only to Territories then in existence. Its language is general: "no act of the territorial legislatures of *any* of the Territories." And it is prospective: "*hereafter to be passed.*"

It is submitted that the act of 1836 is operative in Nebraska.

It is plain that those who assumed to do business in the corporate name understood the law as we claim it, for, when undertaking to convey the lot, some of them used not the corporate style, but their individual names.

SECOND POINT.

Redick had no authority to make the deed to the bank in Mitchell's name.

He assumed to make the deed under a power of attorney from Mitchell. That power in terms limited his authority to convey the title, which, at the time of making it, Mitchell had (see power in record).

From the patent of the Government, and from Lowe's deed, it appears that, on the 17th of March, 1857, Lowe, as mayor, entered the town site of Omaha, including the premises in question, at the United States Land Office, in trust for the occupants, under the Act of May 23d, 1844 (5 Statutes at Large, 657). Of course, prior to that date, Mitchell had no title to the lot; but only occupied it, and when the entry should be made, he would become entitled to a deed. This uncertain and shadowy right he authorized Redick to convey, *and no other.*

Afterwards the mayor conveyed the fee to him. And this title Redick had no authority to convey. His attempt to do so was futile.

The deed on which the defendant defeated our recovery being void, the court erred in refusing our prayer for instructions to the jury to that effect, and in its charge as given; and a new trial should be awarded.

J. M. WOOLWORTH,

Of Counsel for the Plaintiff in error.

Supreme Court of the United States.

SAMUEL W. SMITH,
PLAINTIFF IN ERROR,
vs.
JOSEPH F. SHEELEY.

Argument for Defendant in Error.

This was an action of ejectment, brought by Smith against Sheeley, to recover possession of a lot in Omaha. Both parties claim title from the same source. It is admitted that the town site of Omaha, was entered by Lowe, Mayor, under the Act of Congress of 1844; that the Government issued to him a patent therefor in trust for the owners and occupants, and that the lot in question is in that entry—and further, it is admitted that the Mayor conveyed the lot to Geo. W. Mitchell, from whom both parties claim title. In support of his title, Smith produces in evidence a deed from one James G. Smith, to himself, dated 10th May, 1867, just twenty days before this suit was commenced. He also produces in evidence a deed from Mitchell to James G. Smith, dated 29th May, 1863. This is a very short form of a quit claim deed, and the consideration expressed is one dollar. This is the Plaintiff's title.

The defendant, Sheeley, on his part produces in evidence a power of attorney from Mitchell to John I. Redick, dated 14th February, 1857, authorizing Redick to sell and convey the lot in question, as well as other lots in Omaha, and executed in due form. The admission of the power of attorney was

objected to because Mitchell had not at that date the legal title to the lot, and further because Redick was only authorized to sell such title as Mitchell had at the date of the instrument. The defendant also produced in evidence a deed from Mitchell, by Redick, his attorney in fact, conveying the lot in question to the "Nemaha Valley Bank," dated 5th of May, 1857; consideratien $1,175.

The admission of this deed was objected to on the ground that there was no competent grantee named in the deed, and because it was not duly acknowledged. This is all the written evidence of title produced by the parties.

Two questions are presented to the Bill of Exception.

1. Was Redick authorized by Mitchell to sell and convey the lot to the Nemaha Valley Bank, and

2. Was the Bank a competent grantee to receive title?

I.

It is true that at the date of the power of attorney, Mitchell was not possessed of the legal title to the lot. but he acquired the legal title on the 22d of April, following, and *before* he conveyed, by Redick, to the Bank, this deed being dated May 5, 1857. Though Mitchell had no legal title at the time he made the power of attorney, yet he was as much the real owner of the lot as he was after the Mayor had made the deed to him. He was one of the class of persons who was *entitled* to a deed from the Mayor under the provisions of the Town-site Act of 1844. As the Mayor deeded to him, we are certainly to *presume* that he was *entitled* to the deed, and if so, he was then the real owner, and the only effect of the Mayor's deed was to clothe him with the legal title, or, in other words, to give him the written evidence of his title. The Plaintiff admits that Mitchell was entitled to the Mayor's deed.

The language of the power of attorney is peculiar in some respects, but we can have no difficulty in getting at the in-

tention of Mitchell in the transaction. Evidently he wishes the lot to be so conveyed as to relieve him of all *personal* liability in case of trouble afterwards about the title. He simply wished to give a quit-claim deed, or deed without any personal covenants. This was done. He uses the language, "That I shall not hold myself *personally liable or responsible* "for the acts of my said attorney in conveying any of the "aforesaid lots, beyond quit-claiming whatever title I have in "said premises, without recourse on me, and to that extent, "and that only." He empowers Redick to "sell and convey," &c., the property, but in the manner above stated. Can there be a question as to Mitchell's intention?

And besides, why did he not revoke the power after he acquired the legal title, if his intentions were not to "sell and convey" the lot? Why did he receive as consideration for the sale to the Bank the sum of $1,175, if he did not intend to have the absolute *title* conveyed? Why does he let the matter pass in silence for six years, and even then, after the lapse of this long time, he only breaks this silence by a quit-claim deed of the lot to a third party, for the consideration of *one dollar*.

If Mitchell did not intend to give authority to sell and convey the lot after he should have acquired the legal title, he should have revoked the power, and not having done so, third persons and bona fide purchasers, who derive title mediately through him, ought not to suffer in consequence of his neglect.

But even if the deed from Mitchell to the Bank had been made before he had obtained the Mayor's deed, yet the after acquired legal title would inure to the benefit of the Bank.

In the case of the Farmer's Loan and Trust Company v. McKenney, 6 McLean, 1, it was held that a quit-claim deed will pass the grantor's equitable interest in the land, and that the subsequently acquired legal title will enure to the grantee by way of esteppel.

II.

The plaintiff says that the Nemaha Valley Bank was not a competent grantee, but let this be as it may, Mitchell was a competent *grantor* to receive the $1,175.

The act of the Legislature of Nebraska, creating the corporation, is set forth at length in the record, at the instance of the plaintiff. This act empowers the Bank "to buy and possess property of all kinds," &c. It is shown by the testimony of Rogers that the Corporation was duly organized.

It is well settled that a charter of incorporation cannot be declared void in a collateral suit, but can only be declared so by a proceeding instituted directly against it on behalf of the State. Pearce v. Obery, 20 Conn., 544.

State v. Brger, 7 O., 82.
Webb v. Moler, 8 O, 548.
Frost v. Frostburg Coal Co., 24 How., 278.

This Corporation is certainly *prima facia* a competent grantee.

But it will be claimed that by an Act of Congress, approved July 1, 1836, the act of the Territorial Legislature of Nebraska creating this Corporotion could have no force or effect until approved by Congress.

5, Statutes at large, 61.

1. This act of Congress, by its terms, applies only to the Territories then existing. Nebraska was not then a Territory.

2. Be this as it may, it is evident that the object in view in passing the law was to stay the evil of flooding the country with worthless bank paper. This unquestionably was the sole object of the law. The corporatioa in question, not only possessed, by the terms of its charter, power to "issue bills," &c., but it was also invested with ample power to do various other kinds of business, such as "dealing in ex-

change," with the right to "buy and possess property of all kinds," &c. So the act may be inoperative so far as its banking powers are concerned, until approved by Congress, and yet be perfectly operative and valid for the transaction of all the other business mentioned in its charter. All of the powers conferred, except that if issuing bills and notes, were certainly legitimate and lawful, and it is a well settled principle that a part of an act may even be unconstitutional and void, and at the same time that other provisions of the same act may be valid and obligatory. It does not appear that the Corporation ever issued any bills, and if it did, and even if it paid the $1,175 for the lot in question in its own bills, it would not effect the question.

See case of Orchard v. Hughes, 1, Wal. 73—where the Act of Congress above referred to was invoked to get rid of paying a debt, on the ground that the consideration of the debt was the bills of one of these Territorial Banks. This defence was not sustained.

JOHN I. REDICK,

AND

CLINTON BRIGGS,

Counsel for Defendant in Error.